

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

FLEETCOR TECHNOLOGIES, INC.,
et al.,

Defendants.

Civil Action No. 1:19-cv-5727-AT

JOINT MOTION TO AMEND THE SCHEDULING ORDER

Plaintiff Federal Trade Commission (“FTC”) and Defendants FleetCor Technologies, Inc., and Ronald Clarke (collectively, “FleetCor”) jointly move to modify the previously entered Scheduling Orders entered in this case (ECF Nos. 47, 55). In addition, the Parties request the Court enter specific deadlines for discovery regarding FTC’s claim for equitable monetary relief. In support of this motion, the Parties state as follows:

1. Consistent with the previously entered Scheduling Orders, the Parties have been diligently conducting discovery. Each side has produced and continues to produce non-custodial discovery, and the Parties have reached an agreement on

search terms for custodial discovery from the custodians selected by the FTC pursuant to the Court's August 7, 2020 Order (ECF No. 71).

2. The Parties request a modest extension of certain discovery deadlines.

The effect of these deadlines would be to extend the close of discovery and summary judgment briefing by less than two months. The revised dates requested are as follows:

Event	Prior Deadline	New Deadline
Expert opening reports	September 25, 2020	November 23, 2020
Expert rebuttal reports	October 26, 2020	January 14, 2021
Expert reply reports	November 5, 2020	January 26, 2021
Close of discovery	January 8, 2021	February 28, 2021
FTC's motion for summary judgment	February 8, 2021	March 29, 2021
Defendants' combined cross-motion for summary judgment and opposition to motion for summary judgment	March 10, 2021	April 30, 2021
FTC's combined reply in support of motion for summary and opposition to cross-motion for summary judgment	April 9, 2021	May 28, 2021
Defendants' reply in support of cross-motion for summary judgment	April 30, 2021	June 18, 2021

3. Pursuant to Federal Rule of Civil Procedure 16(b)(4), there is good cause for the requested extension. Despite its best efforts, FleetCor has found it

more difficult, costly, and time consuming to collect the scope and type of discovery materials requested by the FTC. Much of the data and custodial records requested by the FTC are stored on legacy and other hard-to-access storage forms, and FleetCor has therefore had to engage multiple outside vendors to locate, extract, and convert the files. These challenges have been made more difficult by COVID-19 and resulting travel restrictions and work from home directives. These have made it harder for FleetCor, its counsel, and its vendors to have access to the facilities and individuals necessary to collect this discovery. FleetCor expects it can complete this collection, along with its review and production, of the relevant documents with the requested extension.

4. In addition, the Parties propose to set a schedule specific to the FTC's request for equitable monetary relief. The FTC intends to offer calculations regarding the appropriate amount of restitution supported by non-expert testimony and summary exhibits from an FTC data analyst (Elizabeth Anne Miles). FleetCor intends to rebut the FTC's case for restitution through, in addition to other argument and evidence, the expert testimony of Dr. Antoinette Schoar, a professor of finance and entrepreneurship at the MIT Sloan School of Management. The Parties agree that it is most efficient to sequence discovery on restitution so that FleetCor produces data, the FTC provides its calculations and any supporting

declaration or summary exhibits from Ms. Miles, and Dr. Schoar incorporates these calculations into a supplemental restitution report.

5. The Parties therefore propose the following schedule:
 - FleetCor shall substantially complete production of documents and data in response to the FTC's First Set of Requests for Production by **September 30, 2020**.
 - If FleetCor determines that, despite best efforts, additional time is needed to complete its production of documents or data in response to any of the FTC's First RFPs, FleetCor shall inform the FTC by September 15, 2020, and the parties shall jointly seek an extension of applicable discovery deadlines to the extent necessary to account for the delay. A delay in production of data should affect only the restitution provisions established below.
 - The FTC shall serve its response to Defendants' Interrogatory No. 5 and provide any declaration or summary exhibit it intends to offer at summary judgment or trial regarding restitution ("restitution material") four weeks after Defendants provide the data responsive to FTC's RFP No. 25, but no earlier than October 30, 2020.
 - Defendants shall take the deposition of FTC data analyst Elizabeth Anne Miles within two weeks of receiving the FTC's restitution material.
 - Defendants shall serve a supplement to Dr. Antoinette Schoar's expert report on the subject of restitution only, including her response to the FTC's restitution request, six weeks after the FTC discloses its restitution material, but no earlier than December 24, 2020.
 - If necessary, the FTC shall serve a supplement to its rebuttal of Dr. Schoar's expert report, limited to the subject of restitution, within four weeks of receiving Dr. Schoar's supplement concerning restitution.

6. The parties do not seek this extension for purposes of undue delay, nor will the proposed extension prejudice the rights of either party. Rather, the parties' proposed schedule will help to ensure that this Court will have an appropriately complete factual record before it on which to decide the important issues in this case.

7. A Joint Proposed Scheduling Order is attached.

Dated: September 3, 2020

/s/ Michael A. Caplan

Michael A. Caplan
Georgia Bar No. 601039
Jessica A. Caleb
Georgia Bar No. 141507
CAPLAN COBB LLP
75 Fourteenth Street, NE, Suite 2750
Atlanta, Georgia 30309
Tel: (404) 596-5600
Fax: (404) 596-5604
mcaplan@caplancobb.com
jcaleb@caplancobb.com
Counsel for All Defendants

Mark D. Hopson, admitted *pro hac vice*
Benjamin M. Mundel, admitted *pro hac vice*
Daniel J. Hay, admitted *pro hac vice*
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, DC 20005
Tel: (202) 736-8000

Respectfully submitted,

/s/ Thomas C. Kost

THOMAS C. KOST
Tel: (202) 326-2286
E: tkost@ftc.gov
BRITTANY K. FRASSETTO
Tel: (202) 326-2774
E: bfrassetto@ftc.gov
GREGORY J. MADDEN
Tel: (202) 326-2426
E: gmadden@ftc.gov
CHRISTOPHER B. LEACH
Tel: (202) 326-2394
E: cleach@ftc.gov
THOMAS E. KANE
Tel: (202) 326-2304
E: tkane@ftc.gov

Federal Trade Commission
Division of Financial Practices
600 Pennsylvania Avenue, NW
Mail Stop CC-10232
Washington, DC 20580

Fax: (202) 736-8711
mhopson@sidley.com
bmundel@sidley.com
dhay@sidley.com
**Counsel for FleetCor Technologies,
Inc.**

John Villafranco, admitted *pro hac vice*
Jaimie Nawaday, admitted *pro hac vice*
Levi Downing, admitted *pro hac vice*
KELLEY DRYE & WARREN LLP
3050 K St NW
Washington, D.C. 20007
Tel: (202) 342-8400
Fax: (202) 342-8451
jvillafranco@kelleydrye.com
jnawaday@kelleydrye.com

Counsel for Ronald Clarke

Fax: (202) 326-2752
MICHAEL A. BOUTROS
Ga. Bar No. 955802
Federal Trade Commission
Southeast Region
225 Peachtree Street NE, Suite 1500
Atlanta, GA 30303
Phone: (404) 656-1351
Email: mboutros@ftc.gov

Attorneys for Plaintiff
FEDERAL TRADE COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on this day I caused a true and correct copy of the foregoing document to be filed with the clerk's office by this Court's CM/ECF system which will serve a true and correct copy of the same upon all counsel of record.

This 3rd day of September, 2020.

/s/ Michael A. Caplan
Michael A. Caplan
Georgia Bar No. 601039

CAPLAN COBB LLP
75 Fourteenth Street, NE, Suite 2750
Atlanta, Georgia 30309
Tel: (404) 596-5600
Fax: (404) 596-5604
mcaplan@caplancobb.com

Counsel for All Defendants